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RECORD OF ORAL HEARING

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex Parte HENRY L. STERCHI, JEFF KALLES,
SHIGERU MIYAMOTO, DENIS DYACK, and CAREY MURRAY

Appeal 2009-003333
Application 10/078,526
Technology Center 2600

Oral Hearing Held: September 22, 2009

Before ROBERT E. NAPPI, MARC S. HOFF, and THOMAS S. HAHN,
Administrative Patent Judges.

ON BEHALF OF THE APPELLANTS:

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The above-entitled matter came on for hearing Tuesday, September 22, 2009, commencing at 9:35 a.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia, before Cynthea Sydnor-Thomas, Notary Public.

PROCEEDINGS

THE USHER: Calendar No. 72. Mr. Boutsikaris?

JUDGE NAPPI: Good morning, Mr. --

MR. BOUTSIKARIS: Good morning.

JUDGE NAPPI: Pardon me. I'm going to probably mispronounce your -- Boutsikaris?

MR. BOUTSIKARIS: Boutsikaris.

JUDGE NAPPI: Boutsikaris.

MR. BOUTSIKARIS: Yes.

JUDGE NAPPI: If you have a copy of your business card, if you could give to our stenographer so --

MR. BOUTSIKARIS: Oh, sure. Yes, yes.

JUDGE NAPPI: She's -- to make sure she gets it spelled correctly on the record.

MR. BOUTSIKARIS: Of course.

THE REPORTER: Thank you, sir.

MR. BOUTSIKARIS: Thank you.

JUDGE NAPPI: Twenty minutes. You may begin.

MR. BOUTSIKARIS: Okay. Problems with this board.

JUDGE NAPPI: Are those just the figures from --

MR. BOUTSIKARIS: Yes, yes. Okay. Good morning. My name is Leo Boutsikaris, and I represent my client in this oral hearing, this appeal hearing. Our position is that the Final Rejection by the Patent Office is incorrect for the following reasons. Very briefly explain our invention showing these figures. The claimed method involves animating a user-controlled character in a three-dimensional environment with a three-

dimensional game space so that the animated character will have a certain reaction when it comes close to a tagged element. More specifically, in one embodiment, the three-dimensional scene is a corridor in which a game card is working -- tags are associated with respective objects. For example, a tag T-1 is associated with this painting, and tag T-2 is associated with this candle. They activate -- in the sense that when the character is walking down the corridor, it comes closer to a tag. Then the action is caused on this control -- on this character. For example, it turns its head to face the painting. Moreover, when the character is close to tag T-2, and the tag T-2 becomes active, for example, when the candle flares up here, then the character also looks at the second tag T-2. This happens because the second tag has higher priority than the first tag. Once the torch of the candle stops flaring and returns to normal candle, the second tag becomes inactive, and the character again turns its attention to the first tag which is the only active tag. When the character moves away from the tag, from the painting, then it resumes normal facing forward. Therefore, according to the claimed method for the user-controlled character it's in proximity with the tag, the system force a dynamic animation to both the user-controlled character, in this case turning its head, as well as to the object associated with the tag, in this case the candle can flare up.

The Examiner used a combination of two references, Ventrella, in view of Bickmore to reject the claims. Ventrella is related to a method for creating and customizing a user-controlled character in a computer game. The character or avatar is associated with a set of values or genes, each one which represents a different attitude of the avatar. These genes may affect bodily features, for example, the shape of the face, the motion of the avatar

or may represent a certain behavior of the avatar. The genes may be selected randomly or may be customized by the player. A non-embodiment gene representing alertness can be associated with the avatar so that, for example, the head of the avatar will turn toward the point of interest in the -- for example, a flag there. According to Ventrella, the avatar's head orientation start adapting itself so that it's aiming at the bird as it flies by. The Examiner has identified a stimulus measured in Ventrella. For example, the bird that causes the turn of the avatar's head has the claim tag.

Moreover, the second reference Bickmore -- used for the teaching of embedding -- formation into a tag. Bickmore is selected to creating electronic documents, where an avatar is used to annotate the document. Then a document reader reads a document and interacts with the avatar to gain some -- information about the document.

So first, the Examiner doesn't identify any teaching -- in the prior art for the limitation that when the user-controlled character is within a tag, within -- proximity of the tag, the animation to the tagged object itself is modified. Now even if Ventrella teaches using a tag to animate an avatar, for example, turn its head to a flying bird, Ventrella does not teach any using the same tag to animate the object that's associated with the tag. For example, according to Ventrella, an avatar might stare at the bird or turn its head to follow the flight of a bird. Assume that the bird is a tagged object. Ventrella simply does not teach or suggest doing anything to the bird itself.

In contrast, as the figures show in the claimed method, both a user-controlled character, the person walking out on the corridor, and the object associated with the tag, for example, the -- here are modified -- the tag formation. Now Bickmore fails to cure this deficiency of Ventrella. The

Examiner's Answer has not identified where in Bickmore such a teaching or suggestion might be found and provides no reason why this limitation would be obvious other than -- on the two references.

JUDGE HOFF: Mr. Boutsikaris?

MR. BOUTSIKARIS: Yes.

JUDGE HOFF: The reference to paragraph 58 of Bickmore?

MR. BOUTSIKARIS: Yes.

JUDGE HOFF: Towards the bottom of paragraph 58, there is disclosure of a primitive called click object.

MR. BOUTSIKARIS: Yes.

JUDGE HOFF: It says it performs the same actions as if a document reader had clicked on the specified object with the mouse. That may seem to correspond to the object reacting to proximity of an avatar.

MR. BOUTSIKARIS: Well, I think Bickmore --

JUDGE HOFF: What do you think of that?

MR. BOUTSIKARIS: -- in Bickmore the document reader incorporates the avatar. That explains -- that says something about the document itself, and the way that a user brings up the -- by dragging the avatar to a location there in the document or in a clicking of the avatar.

JUDGE HOFF: Yes.

MR. BOUTSIKARIS: Okay, so but again, this nothing says that -- and was it associated with an object, with the tagged object itself is -- animated. Just by clicking on it to bring out the action of the avatar does not we think mean that there is something that's animation of the object.

JUDGE HOFF: Well, the examples given in paragraph, and they all have to give what an avatar would do, move toward an object, point toward

an object or click on the object. Are you saying that it's your opinion that the clicking on the object does not, does not -- the claim language of the animation?

MR. BOUTSIKARIS: Animation -- yes, that's right. Yes, yes, that's our position, and again, I wouldn't think Bickmore teaches or suggests modifying the tagged object. And actually the notion of changing the texts -- or other tagged objects in the document is -- Bickmore. Bickmore doesn't -- it's only related to doing something to the avatar itself like moving around, talking, moving, so that explains something about the document. So I believe that's a difference that Bickmore does not teach that doing something to the tagged object itself.

Now finally we believe that the differences between the two references are such that while it won't be obvious to recombine the two, Ventrella has directed their character in the three-dimensional virtual world, whereas Bickmore is directed to a flat, two-dimensional document. For example -- one of ordinary skill in the art would not have looked to a method of conveying -- information -- flat, two-dimensional object which is taught by Bickmore when trying to build an avatar in a three-dimensional environment which is taught by Ventrella. Also, the objects of the avatars in the two references are different, fundamentally different. Whereas the user in Ventrella moves through a virtual environment by using the avatar, the avatar in Bickmore moves the user through a document by moving to different locations in the document.

And finally, the environments used in -- are significantly different. Words, paragraphs and the like are taught in Bickmore whereas objects like cats, forests, birds are taught in Ventrella. So one of ordinary skill in the art

would not consider techniques associated with a webpage when building a three-dimensional game involving avatars.

So again, we believe that the difference -- the limitation that is not taught by the two references that when a character is close to a tag then their animation agent creates an animation of the tagged object itself in addition to the character.

JUDGE NAPPI: Any questions?

JUDGE HOFF: No.

JUDGE NAPPI: Any further questions?

JUDGE HAHN: I have no further questions.

JUDGE NAPPI: Thank you very much for your time.

MR. BOUTSIKARIS: Okay, thank you.

(Whereupon, the proceedings, at 9:48 a.m., were concluded.)